



Brussels, 24 January 2014

To: European Commission
Secretary-General
Transparency Unit SG-B-15

Re: Confirmatory application re Gestdem 2013/2132

Dear Ms Day,

Herewith I submit a confirmatory application for access to Commission documents, on the basis of the right of access to documents in the EU treaties, as developed in Regulation 1049/2001. On April 19 2013 I submitted (on behalf of Corporate Europe Observatory, CEO) a request for “documents which contain the following information:

- a list of meetings of DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies, including lobby consultancies and law firms, and/or industry associations, in which the upcoming trade negotiations with the US were dealt with (between January 2012 and today);
- minutes and other reports of these meetings;
- all correspondence (including emails) between DG Trade officials and/or representatives (including the Commissioner and the Cabinet) and representatives of individual companies (including lobby consultancies and law firms) and/or industry associations, in which the upcoming trade negotiations with the US were dealt with (between January 2012 and today).”

On July 18th and August 6th 2013 we received two lists of meetings, in which a total of 135 meetings were mentioned.¹ Regarding the correspondence 85 documents were released in October 2013. After several reminders and complaints about the delays, 44 meeting documents were (partially) released January 8 2014. With this confirmatory application we would like to make the following observations and demands:

1: we received lists with a total of 135 meetings which DG Trade had with stakeholders/lobbyists/ when preparing for the TTIP talks. We have now been sent documents related to 44 of these meetings. This means there are no documents released for the remaining 91 meetings. It is hard to imagine that there are no minutes and other reports for all of these meetings. Some of the meetings in the lists are conferences or workshops where DG Trade officials spoke (for which we could understand that no minutes were made), but in this case there might be speaking notes or power-point presentations available. The majority are closed-door meetings with corporate lobbyists on the substance of the TTIP negotiations. Examples include meetings with BusinessEurope, the US Chamber of Commerce, the German industry federation BDI, chemical lobby groups CEFIC and VCI, pharma industry coalition EFPIA, DigitalEurope, the European Services Forum, the Transatlantic Business Council, arms industry lobby ASD, the British Bankers Association, and corporations like Lilly, Citi, BT and BMW. We would like to ask for another search of the DG Trade archives in order to find the documents related to these meetings.

2: all names of lobbyists have been removed from the 44 documents, with reference to Article 4.1b which is about cases where “disclosure would undermine the protection of [...] privacy and the integrity of the individual”. This exception does not apply to these documents and removing the names from the documents is therefore unjustified. The persons whose names were removed are not acting as individuals but are professional representatives of organisations and companies at meetings where they intend to influence EU decision-making on behalf of their employers. There is clear public interest in transparency around who is lobbying on whose behalf and who is getting access to EU decision-makers. To mention just one concrete example: the persons acting as lobbyists at these meetings could be former Commission staff that have gone through the revolving door into industry lobby jobs. Transparency is needed to detect possible conflicts of interest in such situations.

3: 5 of the 44 documents were fully released, whereas 39 are only “partially released”. In practice this means that large parts of the text of these 39 documents has been removed, either 'whitened' or 'blackened'. In most of the cases we find this to be unjustified restricting of our right to know. Text is removed either because it is considered “not relevant” or “non releasable”. To start with the latter, DG Trade uses different problematic arguments for not releasing parts of the texts:

- sentences "have been withheld from the report as they contain information related to the EU's negotiating position in the EU/US trade negotiations. Release of that information would have a negative impact on the EU's ability to conduct the negotiations".² Firstly, we would argue that it would be justified to expect the EU's negotiating position to be publicly available. European Commissioner De Gucht in December 2013 in a letter published in The Guardian argued that “there is nothing secret about this EU trade deal” and that “our negotiations over the Transatlantic Trade and Investment Partnership are fully open to scrutiny”.¹ If that is the case, why are we denied access to sentences with references to the EU negotiating position? This is especially problematic as these are minutes from meetings with industry lobbyists who were clearly given information about the EU's negotiating position in the TTIP talks. Sharing information about the EU's negotiating position with industry but refusing civil society to get access to that same information is unacceptable discrimination. In another example text parts are removed because they "reveal elements of the EU negotiating position in the discussion on regulatory issues. Release of that information would undermine a protection of international relations". The negotiations on regulatory issues is one of the areas where there are very serious concerns about the possible impact of TTIP on environment and consumer protection standards. Transparency around the EU's negotiation position is crucial for allowing the public to assess whether or not there is reason for concern. Again, sharing this information with industry but refusing civil society access to that same information is unacceptable.

- in many cases text parts are removed because they contain the view of industry lobby groups “on particular aspects of the EU/US trade negotiations. Release of that information could have a negative impact on the position of the industry”. It is unclear what precisely is meant by “negative impact on the position of the industry” and why the views of the lobby group should be hidden from public scrutiny. An example is the minutes from the meeting with the US Chamber of Commerce (April 19 2013).³ We are far from convinced why the views on TTIP of this US industry lobby group presented in conversations with DG Trade cannot be released.

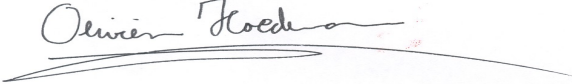
- In several cases, sentences were removed with the argument that "disclosure could lead to a misleading interpretation of EU's bilateral relations with the US and consequently undermine the EU's international relations". This is a very questionable justification, as different viewpoints can always lead to different interpretations. DG Trade might considering these to be “misleading”, but this is something that should be resolved through public debate, not via censorship.

- in numerous documents, large amounts of text is removed from the document with the argument that the text is "not relevant". Our request was for documents which contain information about DG Trade's meetings with lobbyists on TTIP, not for the part of these documents that is about TTIP. By removing these text parts the Commission is failing to reply adequately to our request. Removing the text means important context is lost which makes it more difficult and at times impossible to assess the text that is released.

4: In many cases, DG Trade appears not to have released the requested document but rather created a new text-only document. An example is the above-mentioned meeting with the US Chamber of Commerce (April 19 2013). This is unacceptable and at odds with Regulation 1049/2001.

We therefore ask you to reconsider the case and grant us access to the withheld information.

Yours sincerely,



A handwritten signature in black ink that reads "Olivier Hoedeman". The signature is written in a cursive style and is underlined with a single horizontal line. To the right of the signature, there are some faint red markings, possibly a stamp or a date.

Olivier Hoedeman
on behalf of Corporate Europe Observatory (CEO)

- 1 All documents related to Gestdem 2013/2132 can be found online at:
http://www.asktheeu.org/en/request/dg_trade_contacts_with_industry#incoming-3841
- 2 See Annex 2 “Details of exceptions applying to the documents identified”:
<http://www.asktheeu.org/en/request/473/response/3841/attach/6/ANNEX%20%20Assessment.pdf>”
- 3 Document 17 in Annex 1 “List of meeting reports with industry”